

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1797 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

ANUPBHAI MANUBHAI JANI, DETENUE

Versus

STATE OF GUJARAT

Appearance:

MR RJ GOSWAMI for Petitioner

MR KT DAVE, AGP for Respondent No. 1,2 & 4

MS PJ DAWAWALA for Respondent No. 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 27/04/2000

ORAL JUDGEMENT

#. Detenue Anupbhai Manubhai Jani has preferred this

petition through his wife Khyati Anupbhai Jani, challenging the order of detention which came to be passed by the District Magistrate, Ahmedabad on 6th January, 2000 in exercise of powers under section 3 (2) of the Prevention of Blackmarketing & Maintenance of Supplies of Essential Commodities Act, 1980 ("PBM Act" for short), detaining him under the provisions of the PBM Act.

#. The said order was passed with a view to prevent the detainee from dealing in unauthorised petroleum solvents.

#. The order is challenged by the petitioner/detenué on various grounds. However, Mr. S.V. Raju, appearing for the petitioner has restricted his arguments to the ground of delay and non-application of mind in considering the representation by the Central Government. He has relied upon the affidavit-in-reply filed on behalf of the Central Government. He submitted that admittedly, as stated in para 4 of the affidavit-in-reply filed on behalf of the Union of India, representation was received by the Central Government on February 4, 2000. The case was referred to the Ministry of Law on February 10, 2000 for advice. Advice was received on 24th February, 2000 and the representation came to be rejected on February 25, 2000 and communicated by telegram on that very day. Mr. Raju, therefore, submitted that the lapse time between February 4, 2000 and February 10, 2000 is not explained by the Central Government. This delay of 6 days has affected the right of the detainee of making an effective representation. Mr. Raju further submitted that there is nothing to indicate as to whether the advice of the Ministry of Law was sought for at the behest of the competent authority of the Central Government. If it is so, there is non-application of mind to the representation on the part of the competent authority and non-consideration thereof as well. This has resulted into delay of about 14 days in taking decision on the representation. This has also adversely affected the right of the detainee guaranteed under Article 22 (5) of the Constitution of India. According to Mr. Raju, therefore, the continued detention of the detainee is rendered bad in law. The petition may, therefore, be allowed and the impugned order be quashed. Mr. Raju places reliance on the decision of the Apex Court in the case of R. Paulsamy v. Union of India (1999 (4) SCC 415).

#. The petition is opposed to by learned AGP Mr. K.T. Dave on behalf of respondent nos. 1, 2 & 4 and by Ms.

P.J.Dawavala, on behalf of respondent no.3.

#. Learned counsel for the petitioner has relied upon the affidavit-in-reply itself and factually, there is no dispute about the fact that the representation was received by the Central Government on February 4, 2000. That was referred to Ministry of Law on February 10, 2000 and the advice was received on February 24, 2000. The representation was decided on February 25, 2000. It is true that no attempt is made in the affidavit-in-reply on behalf of the Union of India to explain the lapse of time between February 4, 2000 and February 10, 2000. However, Ms. Dawavala submitted that February 4, 2000 was Friday, February 5 & 6, 2000 were Saturday and Sunday and action is taken on February 10, 2000 and, therefore, there is not much of delay. In the view of this Court, this delay is tried to be explained by learned Standing Counsel for the Union of India, and even if that is accepted that would explain the delay of only two days i.e. 5th & 6th February, 2000. Assuming that 5th February, 2000 was non-working Saturday and 6th February, 2000 was holiday then also, there remains unexplained delay for the 7th 8th & 9th February, 2000. This lapse of three days has remained totally unexplained in the affidavit. Not making any observation on the question whether this delay can be said to be inordinate or otherwise, this matter deserves to be allowed on another ground which is strong enough to hold that the continued detention of the is bad in law.

#. The affidavit stated that the case was referred to the Ministry of Law on February 10, 2000 for advice but the affidavit is silent on the question as to at whose instance or under whose direction, advice of the Ministry of Law was sought. Whether the Competent Authority in the Central Government had sought for this advice after considering the the representation is not stated in the affidavit-in-reply. In this regard, the Apex Court, in the case of Paulsamy (Supra) had considered a very similar situation. In that case, remarks of the State Government were sought, which caused delay and the Apex Court quashed the order of detention by observing thus.

"From the records we find that the order for calling for comments of the sponsoring authority asnot passed by any of the officers empowered by the above orders of the Minister dated 7.7.1995. Therefore, we hold that the representation was dealt with in a routine manner and there was no

application of mind by the competent officer as to whether it was necessary to call for comments of the sponsoring authority." (Emphasis supplied)

In the instant case also, there is nothing to indicate that the case was referred to the Ministry of Law for advice upon direction from the competent officer of the Union of India. The analogy adopted in the Paul Samy's case, where remarks of the State Government were called for, would be applicable to the facts of the present case, because it is the Competent Authority who has to decide the representation and it is that authority which has to decide whether it is necessary to call for the advice of the Ministry of Law for deciding the representation. If the advice sought for is not at the behest of the Competent Authority, it would amount to non-application of mind by the Competent Authority to the representation while calling for the advice. It can, therefore, be said that the representation was dealt with in a routine manner. In the absence of the positive assertion about the calling for of remarks at the behest of or under the orders/directions of the Competent Authority in the Central Government, it cannot be inferred that it was at the instance of the Competent Authority. The representation was therefore dealt with in a routine manner. Delay is caused in considering the representation affecting the right of the detainee. The continued detention of the detainee is rendered bad in law.

#. In view of the aforesaid discussion, the petition deserves to be allowed. The petition is allowed. The impugned order of detention dated 6th January, 2000 is hereby quashed and set aside. The detainee - Anupbhai Manubhai Jani is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no order as to costs.

[A.L. Dave, J.]

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